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The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PATRICK JOSEPH BOHRER, BISHOP CHAPMAN BROCK, ELMOOTAZBELLAH NABIL ELNOZAHY, RAMAKRISHNAN RAJAMONY and FREEMAN LEIGH RAWSON, III

Appeal 2009-007279
Application 09/965,013
Technology Center 2400

Before JAMES D. THOMAS, HOWARD B. BLANKENSHIP, and CAROLYN D. THOMAS, *Administrative Patent Judges.*

J. THOMAS, *Administrative Patent Judge.*

DECISION ON APPEAL[1]

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

This is a decision on appeal under 35 U.S.C. §134 (a) from the Examiner's final rejection of claims 1, 4 through 7, 10 through 15, and 18 through 23. Claims 2, 3, 8, 9, 16, and 17 have been canceled. We have jurisdiction under 35 U.S.C. § 6 (b).

We affirm.

INVENTION AND REPRESENTATIVE CLAIM

Method independent claim 1 itself is best representative of the disclosed and claimed invention:

1. A method of operating a data processing network, comprising:

performing an initial negotiation between a server of the network and a switch to which the server is connected, wherein the initial negotiation establishes an initial operating frequency of a link between the server and the switch;

determining an effective data rate of the server based on network traffic communicated over the link; and

responsive to determining that the effective data rate is below the capacity of a current bandwidth of the link, performing a subsequent negotiation to establish a modified operating frequency, wherein the modified operating frequency is closer to the effective data rate than the initial operating frequency;

automatically repeating, at specified intervals during the operation of the network, the determination of the effective data rate and the contingent initiation of a subsequent negotiation to automatically and periodically

modify the operating frequency to a lowest operating frequency compatible with the effective data rate.

PRIOR ART AND EXAMINER'S REJECTIONS

The Examiner relies upon the following references as evidence of anticipation and unpatentability:

Ravi	US 6,292,834 B1	Sept. 18, 2001
Choi	US 6,661,803 B1	Dec. 9, 2003 (filed Dec. 30, 1999)
Chawla	US 6,876,668 B1	Apr. 5, 2005 (filed May 24, 1999)

Claims 1, 4 through 7, 10 through 15, 18, 19, and 21 through 23 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the Examiner relies upon Chawla in view of Ravi. As evidence of obviousness as to dependent claim 20, to the initial combination of references, the Examiner adds Choi.

CLAIM GROUPINGS

We and Appellants consider independent claim 1 as representative of the subject matter of independent claims 1, 7, 15, and 21 based upon the Appellants' arguments presented in the Brief. No dependent claim is argued on appeal, including dependent claim 20 that is rejected in the second stated rejection under 35 U.S.C. § 103.

ANALYSIS

We refer to, rely on, and adopt the Examiner's findings and conclusions set forth in the Answer. Our discussion here will be limited to the following points of emphasis.

At the outset, we note that Appellants have not contested the proper combinability of the applied prior within 35 U.S.C. § 103 in the Brief on appeal. Indeed, no arguments are presented before us regarding the teachings in Ravi. Instead, Appellants' arguments in the Brief address only the teachings in Chawla.

We have studied the Examiner's statement of the rejection of representative independent claim 1 on appeal as well as the Examiner's responsive arguments thereto and find that we agree with the Examiner's analysis. Indeed, we reproduce here the Examiner's responsive arguments at pages 17 and 18 of the answer:

> (A) With respect to the appellant's argument that the cited art does not teach "determining an effective data rate of the server based on network traffic communicated over the link", the examiner respectfully disagrees. The examiner submits that at least what is taught by the Chawla patent is within the scope of the claim limitation. Chawla teaches the determination of an effective data rate based on network traffic communicated over a link wherein Chawla teaches in column 12, line 61 - column 13, line 4 wherein it is determined if a requested resource (i.e. 100 Kbps bandwidth) is available. Therefore, the communication link is tested to adequately determine whether an effective data rate, in this embodiment 100 Kbps bandwidth, is actually available. If available, the requested bandwidth is negotiated and granted. Therefore, Chawla at least teaches

determining of an effective data rate (i.e. allocate 100 Kbps bandwidth) based on network traffic communicated over a link (i.e. determine that the requested resource is available for use).

(B) With respect to the appellant's argument that the cited art does not teach "responsive to determining that the effective data rate is below the capacity of a current bandwidth of the link, performing a subsequent negotiation to establish a modified operating frequency, wherein the modified operating frequency is closer to the effective rate than the initial operating frequency", the examiner respectfully disagrees. Chawla teaches in column 13, lines 20-24 the determination of an effective bandwidth needed for an application. Chawla is not relied upon for the remaining limitation. Ravi is relied upon for teaching this aspect of the claim. The appellant has failed to consider the references in combination. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In* re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In* re Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The examiner submits that the rejection should be maintained in view of Chawla and Ravi as set forth in the above rejection. Specifically, Ravi teaches, in column 7, lines 16-25, a method for dynamically adjusting bandwidth rates based on performance characteristics, including a step for determining the possibility to change the effective data rate to below the capacity or decreasing bandwidth of a link as is possible. Ravi therefore teaches the limitation of "responsive to determining that the effective data rate is below the capacity of a current bandwidth of the link, performing a subsequent negotiation to establish a modified operating frequency, wherein the modified operating frequency is closer to the effective data rate than the initial operating frequency." One of ordinary skill in the art at the time of the applicants' invention would have found it obvious to implement the ability to decrease the bandwidth capacity of a link as taught by Ravi in combination with the teachings of Chawla which teaches the dynamic allocation of bandwidth.

We find that these responsive arguments of the Examiner directly address the corresponding arguments in the Brief as to the two argued features recited in the body of independent claim 1 on appeal. We are persuaded by the Examiner's reasoning and analysis here in conjunction with the cited portions of Chawla and Ravi relied upon by the Examiner. From our perspective, Appellants' arguments in the Brief relate only to Chawla's teachings and do not accurately reflect the Examiner's entire reasoning of the rejection, since Appellants have presented no arguments in the Brief regarding the Examiner's relied-upon supplemental teachings in Ravi. Of particular note is that the title of both of these patents relate to dynamic bandwidth selection and allocation, both of which reflect the basic thrust of the claimed invention. As a final matter, Appellants' arguments in the Brief also appear to improperly invite us to read into the claims on appeal the subject matter illustrated in figure 4 of the disclosed invention.

Lastly, no Reply Brief has been filed in this appeal to contest the Examiner's positions in the Answer.

CONCLUSION AND DECISION

Appellants has not shown that the Examiner erred in concluding that the subject matter of representative independent claim 1 on appeal would have been obvious to a person of ordinary skill in the art within 35 U.S.C. § 103. Therefore, the decision of the Examiner rejecting all claims on appeal on this statutory basis is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(v).

AFFIRMED

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